

Edition 118
November 2013

eMagazine



Mysore Chapter

The Best Chapter

Year 2007, 2009, 2011 and 2012
in Grade D

Congrats ISRO
All the best for
Mangalyaan

Launching 2 New Columns

I&E Law Cafe

I-Jnana



E- Magazine from The Institute of Company Secretaries of India, Mysore Chapter

-: Editorial Team :-

CS. Dattatri H M
CS. Sarina C H
CS. Omkar N G
CS. Rashmi M R
CS. Abhishek Bharadwaj A B

Support Team:

CS. Ravishankar Kandhi
CS. Ajay Madaiah

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Message from Chairman



Dear Readers,

We are very happy to inform that the Mysore Chapter has been adjudged as the Best Chapter for the year 2012 under 'D' Grade Category. Previously the Chapter was declared the best by ICSI for the years 2007, 2009 and 2011. The award was presented to the Chapter at the 41st National Convention recently held at Chennai. The Managing Committee of the Chapter expresses its deep gratitude to the Office of SIRC and the HQ of ICSI for selecting the Mysore Chapter and giving the recognition. Profound thanks to the members, students, well wishers and our chapter staff, without whose sincere efforts, this achievement would not be possible.

The honour bestowed by this award has increased the responsibility on the Mysore Chapter and we are confident of meeting the expectations with the continued support of all the members and students.

I hope that our professional colleagues have completed the Annual Filings on time and now, it's time for us to equip ourselves with the Companies Act, 2013. Enforcement of the new Act may coincide with the auditing & filing season.

The Chapter is planning to organise a professional seminar during December 2013 and details will be circulated soon. We look forward to your participation.

*Yours in CS fraternity,
CS. Sunil Kumar B G*

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Inside

“The Best Chapter”



ICSI Mysore Chapter declared as the Best Chapter in its category 'D' for the year 2012.

The award was presented at the 41st National Convention of Company Secretaries at ITC Grand Chola, Chennai on 7th November 2013. The award was received by CS. Raghavendra, Treasurer Mysore Chapter of ICSI & CS. Balakrishnan V J, Secretary Mysore Chapter of ICSI. The award was presented by Hon'ble Justice Shri B. N. Srikrishna, Former Judge of Supreme Court of India & Chairman of FSLRC and joined him by CS S. N. Ananthasubramanian, President of the ICSI, CS R. Shridhran, Council Member, ICSI & Chairman Convention Organising Sub-Committee, CS C. Dwarkanath C., Chairman SIRC-ICSI, CS M.S.Sahoo, Secretary ICSI & CS Sutanu Sinha, Chief Executive, ICSI are also present during the award ceremony.

The Mysore chapter has received the best chapter awards earlier in the year 2007, 2009 & 2011. The Chapter believes in transparency and best governance through its administration and activities. We at Mysore Chapter thankfully acknowledge the increased expectations and responsibilities that this award has created.



Two Career Awareness Programs

Activities @ ICSI Mysore

Mysore Chapter had arranged a Career Awareness Program on 22nd October 2013 at Government Women's College, Hunsur, Mysore District.

During this program students were addressed by Ms. Beena G. & Lakshmi D.B., Chapter Officers. Students were briefed about the Company Secretaries Course and the Career Prospects for CS. Around 175 students were present during the program.

Mysore Chapter had arranged Career Awareness Program on 28th October 2013 at the Chapter Premises for Piriapatna Government College students.

During this program the students were addressed by Prof. Niranjana Babu Reddy and students were given an insight to the Company Secretaries Course and the Career Prospects of Company Secretary. Details about the Course were distributed to the participants. Around 35 students were present during the program.



Auditors, Watch out!

Liability of Auditors under the Companies Act, 2013

Lord Justice Topes had once famously remarked that **“The auditor is a watchdog and not a bloodhound.”**

Companies Act, 2013 does not seem to echo this thought!

The kind of stringent measures prescribed against auditors gives the picture that the Act indeed expects the auditors to be bloodhounds in discharging their duties and not merely be watch dogs. The Satyam debacle seems to have cast a very gloomy image in the minds of regulators as far the auditors are concerned.

In the current write up, we have brought out the penal provisions and the actions which can be initiated by various regulatory and non regulatory authorities in case of any lapse on the part of the Auditors in discharging their duties effectively.

➤ **Penalty for non-compliance with any of the provisions contained in Sections 139, 143, 144 and 145 of the Act**

Section 139 provides for appointment of auditors, Section 143 deals with power and duties of auditors, Section 144 is on certain services which an auditor cannot render and Section 145 is on signing of audit report and other documents by auditor. Auditor shall be punishable with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. **5,00,000/-**. If an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with **imprisonment** for a term which may extend to **1 year** and



CS. S Dhanapal B.Com,B.A.B.L., F.C.S
Sr. Partner, S Dhanapal & Associates
Practising Company Secretaries, Chennai
csdhanapal@gmail.com

with fine which shall not be less than Rs. 1,00,000/- but which may extend to Rs. **25,00,000/-**.

Convicted auditor shall **refund the remuneration** received by him from the Company and **pay for damages** to the company, bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

➤ **Penalty for failure to disclose fraud**

As per Section 143(12), if in the course of the performance of his duties as auditor, he has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, Auditor shall immediately report the matter to the Central Government. In case of any failure on his part to comply with this duty, he shall be punishable with fine which shall not be less than Rs. 1,00,000/- but which may extend to **Rs. 25,00,000/-**.

➤ **Penalty for professional misconduct – NFRA - Watch on the watch dogs!**

National Financial Review Authority (NFRA) shall have power to investigate, either suo motu or on a reference made to it by the Central Government into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949.

Where professional or other misconduct is proved, NFRA shall have the power to make order for—

(A) imposing penalty of—

(I) not less than Rs. 1,00,000/-, but which may extend to five times of the fees received, in case of individuals; and

(II) not less than Rs. 10,00,000/-, but which may extend to ten times of the fees received, in case of firms;

(B) debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of 6 months or for such higher period not exceeding 10 years as may be decided by the NFRA.

➤ Action in case of fraud by auditors

Change of auditors by NCLT:

The NCLT either suo motu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

Such an auditor, shall not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Disqualification for appointment as auditor:

A person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed

from the date of such conviction shall be disqualified to be appointed as auditor of any company.

Action under Section 447:

Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud.

Liability of firm:

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

➤ Class Action Suits

Any 100 or more members/deposit holders of the company or 10% of the total number of members/deposit holders of the company can file a class action suit to claim damages or compensation or demand any other suitable action against the auditor in the manner prescribed under Section 245 of the Act. Action under this section can be initiated against the auditor including audit firm of the company for any improper or misleading statement of particulars made in the audit report or for any fraudulent, unlawful or wrongful act or conduct.

Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.



Listing without IPO: No More A Dream



CS. Amar Kakaria ACS, ACA, ACWA
Director, Fusion Advisors Pvt Ltd, Mumbai
amar@fusionadvisors.in

The Finance Minister has kept his promise to allow small and medium companies to get listed on recognized stock exchanges in India without following tedious IPO process with the help of different intermediaries including merchant bankers. Now, SME companies would be able to get listed on the Institutional Trading Platform without coming out with an IPO.

Under guidance of Finance Ministry, SEBI has initiated a new trading platform for the SME companies and has issued a notification on the modalities involved therein. The new Regulations are called SEBI (Listing of specified securities on Institutional Trading Platform) Regulations, 2013. Accordingly necessary amendments have been made in SEBI (ICDR) Regulations, SEBI (SAST) Regulations and SEBI Delisting Regulations. Through these amendments, SME companies would be able to get listed on the Institutional Trading Platform without coming out with an IPO. It will help them to save huge costs, time and legal hassles.

Applicability

These regulations are applicable to all SME companies whose securities are not listed on any recognised stock exchanges in India and which seek listing of their specified securities exclusively on the institutional trading platform. A SME Company shall be eligible for listing on the platform provided it satisfies the following:

- The Company has at least 1 full year's audited financial statements.
- Company has not completed a period of > 10 years after incorporation and its revenues have not exceeded Rs. 100 crore in any of the previous financial years.

- Paid up capital has not exceeded Rs. 25 Crores in any of the previous financial years.

- No regulatory action has been taken against the Company, its promoter or director, by the SEBI, RBI, IRDA or MCA within a period of 5 years prior to the date of application for listing.
- Company / its promoters / group companies are not appearing in the willful defaulters list of RBI or CIBIL.
- The Company and its group companies have not been referred to BIFR during preceding 5 yrs prior to the date of application for listing.
- No winding up petition has been admitted against the Company.

In addition to all the above, it must satisfy any one of the following conditions as well:

- At least 1 AIF / VCF / Angel Investor has invested a minimum amount of Rs. 50 lakhs in equity shares of the Company; or
- The Company has received finance from a scheduled bank for its project financing / working capital requirements and a period of 3 yrs has elapsed from such financing and the fund have been fully utilized; or
- A SEBI registered Merchant Banker has exercised due diligence and has invested not less than Rs 50 lakhs in equity shares of the Company which shall be locked in for a period of 3 years from the date of listing; or

- A QIB has invested not less than Rs. 50 lakhs, which shall be locked in for a period of 3 years from the date of listing; or
- A specialized international multilateral agency or domestic agency or a Public Financial Institution has invested in the equity capital of the Company.
- At least 20% of post listing capital shall be held by the Promoters with a lock in period of 3 years from the date of listing.

Simplified Exit from Institutional Trading Platform:

A Company may delist its securities by passing a special resolution through postal ballot wherein 90% of total votes and majority of non promoter votes have been cast in favour of the proposal and by obtaining exit approval from the concerned stock exchange. However, the Company shall compulsorily exit the platform under following circumstances:

Procedure for Listing:

- An Information Document needs to be filed alongwith an application for listing to Exchange. It shall be made public by hosting on the Exchange's website for a period of atleast 21 days from the date of such filing.
- The recognised stock exchange may grant in-principle approval to the Company.
- On receipt of the said in-principle approval by the Company other requirements under SCRR shall be deemed to have been waived by SEBI for the limited purpose of listing on the platform.



- Period of 10 years has expired from the date of listing.
- Paid-up capital of the Company has crossed Rs. 25 Crores
- Revenue and market capitalization of the Company have crossed milestones of Rs. 300 crore as per the last audited financial statement and Rs. 500 crore respectively.

Important Conditions for Listing:

- Listing on Institutional Trading Platform shall neither be accompanied by any issuance of securities to general public nor shall the Company come out with any public offer in future while listed on the platform.
- However, to meet its fund requirements, the Company may raise capital through private placement or rights issue without renunciation of rights, subject to fulfillment of other regulatory provisions.
- All specified securities shall be traded only in dematerialized form and minimum trading lot shall be Rs. 10 Lakhs.

- The Company has failed to submit periodic filings with the exchange / comply with corporate governance norms / other listing conditions for more than 1 year.

In case of a compulsorily delisting, no Company promoted by its Promoters shall be allowed to be listed on the Platform for a period of 5 years from the date of such delisting.

SEBI has made an interesting move by introducing Institutional Trading Platform in order to tap growing companies which are funded by VC Funds. Needless to mention, large investors are going to have wide range of investment options in the days to come which will make Indian capital markets more competitive.

Update from SEBI

Shri S Raman, Whole Time Member (WTM), SEBI passed an order on October 31, 2013 in the matter of M/s. Samruddha Jeevan Foods India Ltd. directing the company and its directors viz. Mr. Mahesh Kisan Motewar, Mrs. Vaishali Mahesh Motewar and Mr. Ghanshyam Jashbhai Patel not to collect any more money from investors including under the existing schemes, not to launch any new schemes, not to dispose of any of the properties or alienate any of the assets of the schemes and not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of the company. M/s. Samruddha Jeevan Foods India Ltd was *prima facie* found to be engaged in fund mobilising activity from public by floating 'collective investment schemes' as defined in Section 11AA of the SEBI Act. The company had launched collective investment schemes without obtaining certificate of registration from SEBI, thus contravening the provisions of section 12 (1B) of the SEBI Act and Regulation 3 of the SEBI (Collective Investment Schemes) Regulations, 1999.

M/s. Samruddha Jeevan Foods India Ltd and its Directors

I-Jnana

....Made in mind



New Column on
Intellectual Property Rights by

CS. K Vijayshyam Acharya,

B.Com, LLB, ACS, ACA

Bangalore

vijayshyam@yahoo.com



Over the years, it is abundantly clear that Intellectual Property Rights (IPR) arise as an important tool for protection in every field of business. While some businesses like Electronics, Pharma, Information Technology, Music and the like may depend heavily on IP protection and use IP as a source of profit, the importance of IP in other businesses, including traditional ones, cannot be ignored. Many companies use IP as a strong weapon for protection from competition. Given this background, this update will focus on briefly summarizing some important developments in IPR, in India and abroad.

Dynamic utility to ascertain status of patent by public

In India, the Controller General of Patent Design and Trademarks has launched a dynamic utility which will allow the public to conduct a search to ascertain the status of a patent. The utility displays the Patents that have ceased to be in effect. The displayed list is real time and may be updated upon official actions. Actual legal status may be confirmed from the respective jurisdiction of Patent Office. The list depends upon the digitization status of Patents.

Link: <http://ipindiaservices.gov.in/eregisterreport/>

Settled Trade Mark oppositions:

The Trade Mark Office in India is currently updating records, and accordingly, has requested all parties who have filed oppositions which have either been withdrawn or settled to inform the Office about such facts with requisite documentary proof so that the Office can pass appropriate orders at the earliest.

Creativity as criteria for copyright in India

As per the Copyright Act, 1957, it is the expression of an idea on which copyright can be claimed, and not on an idea per se. To qualify for copyright, the idea must be original to the author. Original means, the work should be independently created by the author, as opposed to copying from other sources. And, it should possess at least some minimal degree of creativity. A work may be original even if it closely resembles another work, so long as there is no copying involved. Thus a derivative or secondary work resulting out of investment of labour and skill by its creator, is also required to have some creativity attached to it to qualify as copyrightable.

IPR in News

Google removes record-breaking 200m piracy links so far in 2013

Google has been forced to remove over 200m "pirate" links from its search listings by rights holders in 2013 a four-fold increase over 2012. Data released as part of Google's transparency reports, compiled by TorrentFreak, show that at the current rate removal of alleged piracy links, Google will have been forced to delete over 250m by the end of 2013. The UK and US recording industry trade bodies BPI and RIAA lead the charge for takedown notices, with a combined 74m requests so far in 2013. FilesTube, a Poland-based file hosting site, had the highest level of removals with over 7.6m links deleted from Google search results. In total, Google was asked to remove links from 295,726 domains by 29,434 copyright holders.

Source: <http://www.theguardian.com>



Laws of India ^{Beta}

A Project of PRS Legislative Research



Law is a system of rules and guidelines which are enforced through social institutions to govern behavior. Laws can be made by legislatures through legislation, by judges through binding precedents, or the executive through rules and regulations.

In India, law is made by Parliament and State Legislatures. Laws made by Parliament can be traced in public domain at various sites, including those maintained by the Law Ministry. However, laws of the State Legislatures are not easily available to the general public. But, dear friends with <http://www.lawsfindia.org/> coming-up, this problem is solved!

This <http://www.lawsfindia.org/> site is not only for professionals but also helpful for the administrative officers, entrepreneurs, and each and every person who wants to reach to Central or State laws. In this site, every Act and Rules of Centre and State are available in.pdf format.

This website contains only the bare Acts and Rules and not the commentaries. Why to wait?!!! Grab this wonderful opportunity to have access to the laws of your choice and enrich your knowledge.

Tech News

Shortly, you may use mobiles phones on all flights



US carriers are expected to allow passengers to use smartphones, tablets and ebook readers throughout flights by the end of the year after US aviation regulator FAA eased restrictions earlier this November. The European Aviation Safety Agency (**Easa**) is to follow the US lead in easing restrictions on the use of mobile electronic devices during flights.

“This is a major step in the process of expanding the freedom to use personal electronic devices on-board aircraft without compromise in safety,” said Easa executive director Patrick Ky. In the long term, Easa is looking at new ways to certify the use of mobile phones on-board aircraft to make phone calls.

Once Europe takes this step, may be other countries too follow the path sooner than later!

(Source: <http://www.computerweekly.com>)

Can we waste food just because we have paid for it?

Narration by an Indian visitor to Germany:

When I arrived at Hamburg in Germany, my colleagues who work in Hamburg arranged a welcome party for me in a homely restaurant. As we walked into the restaurant, we noticed that a lot of tables were empty. There was a table where a young couple was having their meal. There were only two dishes and two cans of beer on the table. I wondered if such simple meal could be romantic, and whether the girl will leave this stingy guy. There were a few old ladies on another table. When a dish is served, the waiter would distribute the food for them, and they would finish every bit of the food on their plates.

We did not pay much attention to them, as we were looking forward to the dishes we ordered. As we were hungry, our local colleague ordered more food for us. As the restaurant was quiet, the food came quite fast. Since there were other activities arranged for us, we did not spend much time dining. When we left, there was still about one third of unconsumed food on the table.

When we were leaving the restaurant, we heard someone calling us. We noticed the old ladies in the restaurant were talking about us to the restaurant owner. When they spoke to us in English, we understood that they were unhappy about us wasting so much food. But we felt that they were really being too busybody.

"We paid for our food, it is none of your business how much food we left behind," my colleague Gui told the old ladies. The old ladies were furious. One of them immediately took her mobile phone out and made a call to someone. After a while, a man in uniform claimed to be an officer from the Social Security organisation arrived. Upon knowing what the dispute was, he issued us a 50 Euro fine. We all kept quiet. The local colleague took out a 50 Euro note and repeatedly apologized to the officer.

The officer told us in a stern voice, "ORDER WHAT YOU CAN CONSUME, MONEY IS YOURS BUT RESOURCES BELONG TO THE SOCIETY. THERE ARE MANY OTHERS IN THE WORLD WHO ARE FACING SHORTAGE OF RESOURCES. YOU HAVE NO REASON TO WASTE RESOURCES."

Our face turned red. We all agreed with him in our hearts. The mindset of people of this rich country put all of us to shame.

WE REALLY NEED TO REFLECT ON THIS.

We Indians are from a country which is not very rich in resources. We order large quantity and also waste food when we give others a treat or even for ourselves. Rule of not wasting food is followed in many religious places in India where food is served. Let us change our habits if we are doing this.



Pictures worth Millions

I&E Law Cafe



**New Column
on Industrial and Employment laws by**

Sharath Mahendra Kumar

B.Com, MBA, LLB, MPhil, PGDMM. (ACS, LLM)
sharathm kumar@yahoo.com

This is a humble attempt to share my experience gained across various organisations starting right from proprietorship business houses to some of the fortune 500 Multinational Companies like Bosch, TATAs etc., in managing human relations with statutory compliance.

Very often, a Company Secretary has to advice the Board on handling the human relations from compliance perspective. It could be in the areas of talent acquisition, head hunt, recruitment, selection, training, performance management, rightsizing, expansion, mergers, amalgamations, expatriation & repatriation, closure etc. All these situations calls for prudent application of labour legislations.

Human Resources vs. Industrial Relations:

We HR Professionals often come across a skirmish with two crazy phrases viz., **“Human Resources Management” (HRM) & “Industrial Relations” (IR)**. Over a period of time, these terms have been understood by majority of the HR Professionals as two different connotations dealing with totally distinct facets of Human Resources Functions. Some of us have even gone to an extent of deriving a mental equation on these two terms which can be inked as,

- A. Talent Acquisition + White Collar employees + Retention Strategies = **HRM**
- B. Unions + Blue Collar employees + Strikes = **IR**

There are also some paradoxical statements made viz., **“HR & IR are the two different faces of the same coin” - “HRM deals with white collar employees & IR deals with blue collar employees”**

When we toss a Re.1/- coin, the probability of getting head or tail is obviously “ONE”. Irrespective of whether one gets head or tail, still the value of the coin remains unchanged. In similarity, whether it is HRM or IR, it really doesn't change the nature of the functions being handled.

Further, in my prudent & latest updates, none of the law nor any conventions on labour relations by International Labour Organization or Indian Labour Organization have defined as to who are known as “White Collar” & “Blue Collar Employees”.

Having said that, we HR Professionals should realize the fact that, end of the day it is only the human beings that we are dealing with who have equal aspirations with divergent intensity.

It's just like, “All are Mad, only the Madness Differs”... ☺

On a serious note, key aspects to be noted, as a HR Professional,

- I. HR & IR are not two different functions but just a change of nomenclature;
- II. Unions are not militant groups nor hindering factor for growth story of business;

Therefore, if we have to re-phrase the terms HRM & IR, it would be just **“Managing Human Relations”** which are sensitive irrespective of whether White Collar or Blue Collar or Collar less employees...

This understanding will help us in upholding the concept of Socio Economic Development, Industrial Democracy & Social Justice.

Take a Guess.....

1. Indian Constitution was adopted on:

- i) 26th Nov'1949
- ii) 26th Jan'1950
- iii) 26th Jan'1951
- iv) 15th Aug'1947

2. Gratuity is paid to an employee on completion of continued service of:

- i) 05 yrs
- ii) 4yrs 240 days
- iii) 03yrs
- iv) 06yrs

3. Bonus is payable on:

- i) Basic + DA
- ii) Basic
- iii) Basic+ DA+ VDA
- iv) all I, II, III

4. Part III of Indian Constitution provides for how many categories of fundamental rights:

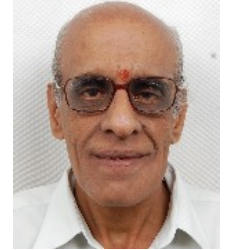
- i) 06
- ii) 05
- iii) 04
- iv) 03

(Answers are given elsewhere in this edition)

Money Laundering, Terrorist Financing and Legal Professionals

In June 2012, the Financial Action Task Force (FATF) Plenary met in Rome and agreed to conduct typology research into the money laundering and terrorist financing (ML/TF) vulnerabilities of the legal profession. The Research Report has been published now. Here is the synopsis.

Complete Report can be accessed at: <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf>



CA Ramachandran Mahadevan, M.Com., F.C.A.,
Chartered Accountant, Bangalore
ramachandran.mahadevan@gmail.com

The report concludes that criminals seek out the involvement of legal professionals in their ML/TF activities, sometimes because a legal professional is required to complete certain transactions, and sometimes to access specialised legal and notarial skills and services which could assist the laundering of the proceeds of crime and the funding of terrorism.

The report identifies a number of ML/TF methods that commonly employ or, in some countries, require the services of a legal professional. Inherently these activities pose ML/TF risk and when clients seek to misuse the legal professional's services in these areas, even law abiding legal professionals may be vulnerable. The methods are:

- i. misuse of client accounts;
- ii. purchase of real property;
- iii. creation of trusts and companies;
- iv. management of trusts and companies;
- v. administration of deceased estates
- vi. providing insolvency services
- vii. providing tax advice
- viii. preparing powers of attorney
- ix. managing client affairs and making introductions;
- x. undertaking certain litigation -where the underlying dispute is a sham or the debt involves the proceeds of crime; and
- xi. setting up and managing charities.

Combating ML/TF relies on legal professionals by:

- i. being alert to red flags indicating that the client is seeking to involve them in criminal activity



- ii. choosing to abide by the law, their ethical obligations and applicable professional rules; and
- iii. discerning legitimate client wishes from transactions and structures intended to conceal or promote criminal activity or thwart law enforcement.

Case studies show that not all legal professionals are undertaking Client Due Diligence (CDD) when required. Even where due diligence is obtained, if the legal professional lacks understanding of the ML/TF vulnerabilities and red flag indicators, they are less able to use that information to prevent the misuse of their services.

Greater education on vulnerabilities and awareness of red flag indicators at a national level may assist to reduce the incidence of criminals successfully misusing the services of legal professionals for ML/TF purposes.

Research has also confirmed that neither legal professional privilege nor professional secrecy would ever permit a legal professional to continue to act for a client who was engaging in criminal activity.



Compilation:
CS. Ajaay Madaiah, Mysore

Mangalyaan

The Mars Orbiter Mission (MOM), informally called *Mangalyaan* is a Mars orbiter that was successfully launched into Earth orbit on 5 November 2013 by the Indian Space Research Organisation (ISRO).

Here are the few facts of this mission;

1. The primary objective of the mission is to demonstrate India's technological capability to send a craft to orbit around Mars and conduct meaningful experiments such as looking for signs of life, take pictures of the Red planet and study Martian environment.
2. The satellite will carry compact science experiments, totaling a mass of 15 kg – five instruments to study Martian surface, atmosphere and mineralogy.
3. Mangalyaan's journey is a long one - a 300-day, 780 million-kilometer (485 million-mile) journey to orbit Mars and survey its geology and atmosphere. At its closest point it will be 365 kilometers (227 miles) from the planet's surface, and at its furthest – 80,000 kilometers (49,700 miles).

4. Mangalyaan will also search Mars for methane, a key chemical in life processes on Earth that could also come from geological processes.
5. Once launched the satellite is expected to go around Earth for 20-25 days before embarking on a nine-month voyage to the red planet on December 1 and reach the orbit of Mars on September 24, 2014.
6. If the Rs 450 crore MOM mission turns out to be a success, ISRO would be the fourth space agency in the world to have sent a mission to Mars.
7. European Space Agency (ESA) of European consortium, National Aeronautics and Space Administration (NASA) of the US and Roscosmos of Russia are the only three agencies which have so far sent their missions to the red planet.
8. Only 21 of the total of 51 missions sent to Mars by various countries have been successful.
9. Five solar-powered instruments aboard Mangalyaan will gather data to help determine how Martian weather systems work and what happened to the water that is believed to have once existed on Mars in large quantities.

Did you know?

VCES

Service Tax Voluntary Compliance Encouragement Scheme, 2013 (VCES) provides an opportunity to pay all your 'tax dues' from the period 01.10.2007 to 31.12.2012 without interest, penalty and other legal proceedings including prosecution. Applications can be submitted on or before 31.12.2013 in the prescribed format.

Still Guessing?

Answers for the queries in Page 11:

- 1) i 2) ii 3) iv 4) i



Pick of the month

Wages under PF Act

Payment of service, advertisements, housekeeping charges & payment to consultants - not considered wages for payment of Provident Fund.

(M/s. Samcon Ressor Hotel (P) Ltd. V/s. APFC, Kolkata)

On an appeal to the decision against the order of PF authority for initiating proceedings. The Ld. Tribunal observed that the perusal of definition of "basic wages" as provided under the Act, reveals that the payment to be considered as wages should be made to all the employees while they are on duty. The payments towards service, advertisement, housekeeping charges and consultants do not show that the same were made to the employees working exclusively for the appellant.



Compiled by:
CS. Abhishek Bharadwaj A.B.
Bangalore

CUSTOMS & FTP **Notifications/ Circulars**

Seeks to levy anti-dumping duty on imports of Methylene Chloride, originating in, or exported from the European Union, USA and Korea RP for a period of Six Months

24/2013 - Cus (ADD), dt 21-10-2013

Seeks to finalize provisional assessments of all imports of vitrified/ porcelain tiles falling under CTH 6907 or 6908 or 6914, by M/s Foshan Qiangbiao Ceramics Co. Ltd, China PR (producer) through M/s Sheenway Corporation Ltd., Hong Kong (exporter) which have been subjected to provisional assessment pursuant to the notification No. 35/2012-Customs (ADD), dated the 10th July, 2012

25/2013 - Cus (ADD), dt 22-10-2013

Seeks to levy anti-dumping duty on imports of Paracetamol , originating in, or exported from the People's Republic of China for a further period of five years

26/2013 - Cus (ADD), dt 28-10-2013

Amends Notification No. 36/2001-Cus.(NT) dated August 3, 2001 to increase tariff value of gold from 418 USD per 10 grams to 442 USD per 10 grams.

No. 106/2013 - Cus.(NT) dated October 29, 2013

An importer while availing of basic customs duty exemption on import of steam coal from Indonesia under Notification No. 46/2011-Cus. dated June 1, 2011 can simultaneously avail of concessional CVD at 2% under Notification No. 12/2012-Cus. Dated March 17, 2012. *No. 41/2013-Cus. Dt Oct 21, 2013*

Clarifies that period of 90 days beyond which interest is payable under Section 61(2)(ii) of the Customs Act, 1962 for warehoused goods would commence from date of deposit of goods in warehouse. *No. 39/2013-Cus.dated October 1, 2013*

Case Law

The High Court of Kolkata held that application before the Settlement Commission can be made only if proceeding are pending before an adjudicating authority on the date on which an application under sub-section 1 of Section 127B of the Customs Act, 1962 ("the Customs Act") is made. Since

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proceeding for recovery under Section 142 of the Customs Act does not contemplate any adjudication by adjudicating authority, application for settlement with regard to same cannot be filed before the Settlement Commission.

Exotica Global Pvt. Ltd. Vs. UOI [2013-TIOL-819-HC-KOL-CUS]

FEMA/RBI **Notifications/Circulars/News**

Now onwards NOC is NOT required to be obtained from the respective financial sector regulator/regulators of the investee company as well as transferor and transferee entities in case of transfer of shares from Residents to Non-Residents where the investee company is in the financial services sector. Such NOC(s) were used to be filed with the form FC-TRS to the AD bank on transfer of such shares.

RBI/2013-14/366 A. P. (DIR Series) Circ. No.72 Nov 11, 2013

Import of Gold allowed for export under Advance Authorisation / Duty Free Import Authorization

RBI/2013-14/367 A. P. (DIR Series) Circ. No.73 Nov 11, 2013

CENVAT **Notifications/ Circulars**

Notn No. 10/1997-CE is amended to provide exemption from payment of excise duty to (a) scientific and technical instruments, apparatus, equipment(including computers);(b) accessories and spare parts of goods specified above and consumables;(c) software, CD-ROM, recorded magnetic tapes, microfilms, microfiches; and (d) prototypes when supplied for research purpose to department and laboratories of the Central and State Governments other than a hospital subject to conditions. *No. 28/2013-CE dated October 1, 2013*

Clarifies that period of 90 days prescribed under Section 11BB of the Central Excise Act, 1944 ("the Excise Act") for processing of rebate claims is the outer limit after which interest becomes payable. Further, instructs concerned authorities that all efforts should be made to ensure that claims of rebate are disposed off within 30 days from date of receipt of claim complete in all respects, except those requiring pre-audit. *F No. 267/39/13-CX.8 dt October 1, 2013*

The Union Cabinet on October 18, 2013 gave its approval for setting up six additional Benches of the CESTAT, including three at the existing locations of New Delhi, Mumbai and Chennai and three new Benches at Chandigarh, Allahabad and Hyderabad.

Case Law

The Tribunal held that when edible Coconut oil packed in packing of 200 ml. or less cannot be considered as preparation for use on hair in the absence of any evidence that composition of both types of oils are different. Therefore, edible coconut oil packed in packing of less than 200 ml. is rightly classifiable under Chapter 15 of the Central Excise Tariff Act, 1985 and not under Chapter 33 thereof.

Raj Oil Mills Vs. CCE [2013-TIOL-1609-CESTAT-MUM]

The Tribunal held that since assessee was engaged in manufacture of sugar and molasses wherein bagasse was generated as waste and by-product, there was no requirement for assessee to pay 5%/10% of value of bagasse cleared for availing cenvat credit on inputs.

Delta Sugars Vs. CCE [2013-TIOL-1537-CESTAT-BANG]

VAT, Sales Tax and Entry Tax

The State Government of Punjab has suggested to the Union government to create a GST Compensation Fund under administrative control of the GST Council to provide for a built in permanent compensation mechanism with a view to address legitimate revenue concerns of the States.

Punjab Government for GST compensation Fund [Daily Post, October 27, 2013]

Case Law

The dispute before the Hon'ble High Court of Calcutta was as to whether in respect of disposal of vehicle for recovery of loan, bank/ NBFC are liable for tax as dealers as per definition of term 'dealer' under Section 2(11) of the West Bengal Value Added Tax Act, 2003 ("the WB VAT Act" Court held that bank is a dealer and is covered by main part of definition of the term 'dealer' under the WB VAT Act as sale of vehicle is in the course of banking business and such sale is effected in exercise of statutory right under the Banking Regulation Act, 1949. *Tata Motors Finance Ltd. Vs. Assistant Commissioner of Sales Tax [2013-VIL-85-CAL]*

In regard to rejection of Form 'F' by the assessing authority in assessment order under Section 9(2) of the Central Sales Tax Act, 1956, and Section 39(1) of the Karnataka Value Added Tax Act, 2005 on the grounds of correction and overwriting, the High Court observed that forms should not be rejected on imaginary grounds and demand notice should not be issued. It is categorically stated such action on the part of the authorities is to be viewed seriously.

Pfizer Limited Vs. State of Karnataka [2013-VIL-86-KAR]

The High Court of Calcutta held that Section 22 of the WB VAT Act makes it amply clear that benefit of input tax credit ("ITC") could be claimed subject to such conditions and restrictions as may be prescribed. Therefore, there was no reason to hold that conditions and restrictions prescribed were not mandatory. The rules clearly provide that in case the dealer intends to claim benefit of ITC, he shall make payment in any of the prescribed modes. When the dealer did not pay for the goods claimed to have been purchased in one of the

prescribed modes, the only conclusion which can be arrived at is that he did not intend to claim benefit of ITC.

Ajit Kumar Mundra Vs. CTO & Ors. [2013-VIL-89-CAL]

The High Court of Gauhati held that there is an express provision under the Central Sales Tax, 1956 ("the CST Act") and rules thereof requiring purchasing dealer to issue Form 'C' to selling dealer for availing benefit of lower rate of tax under CST and merely because contract does not stipulate issuance of form 'C', purchasing dealer cannot refuse to issue Form 'C' to selling dealer who is entitled to benefit under section 8(1) of the CST Act only on production of such forms.

OMIL-JSC-JV Vs. Union of India and Others [2013-VIL-82-GAU]

The High Court of Allahabad held that taxable event under the Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 is entry of goods into the State of Uttar Pradesh. Therefore, value of goods at the time of entry has to be taken into consideration for charging tax and not any other value whether it is whole sale price or retail price at a point later than their entry into the State.

Binani Cement Ltd. Vs. State of Uttar Pradesh and Others [2013-VIL-83-ALH]

Service Tax

Notifications/ Circulars/News

Amends Notification No. 25/2012-ST dt June 20, 2012 to provide exemption from ST to services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948, having the facility of air-conditioning or central air heating at any time during the year. *No. 14/2013-ST dated October 22, 2013*

When food is sourced from a common kitchen in a complex having more than one clearly demarcated and separately named air conditioned and non-air conditioned restaurants, only service provided in air-conditioned restaurant is liable to service tax. In such cases, service provided in non-air-conditioned/ non-centrally air-heated restaurant will be treated as exempted service and Cenvat credit entitlement will be as per the Cenvat Credit Rules, 2004.

No. 173/8/2013-ST dated October 7, 2013

Case Law

Unless application under the Voluntary Compliance Encouragement Scheme, 2013 ("the Scheme") is considered and decided, proceedings for recovery under Section 87 of Chapter V of the Finance Act, 1994 ("the Finance Act") cannot be initiated as the object of the Scheme may be defeated, if the recovery is allowed to proceed.

K Anand Caterers Vs. Uol [2013-TIOL-741-HC-ALL-ST]

Same activity cannot be considered as manufacturing and subjected to excise duty and at the same time considered to be a service and subjected to service tax.

Jubilant Industries Limited Versus CCE, Ghaziabad [2013 (9) TMI 358 - CESTAT NEW DELHI]

The department sought service tax on design and development charges paid to upcountry manufacturers/fabricators of moulds under reverse charge mechanism. Finding force in the assessee's contention that even if service tax is paid Cenvat credit would be available since the moulds were used in manufacture of glass bottles. The Tribunal held that prima facie ST was not payable in respect of development charges.

Pragathi Glass Vs. Commissioner - 2013 (32) STR 213



Bullet News →

- *RBI hikes repo rate, cuts MSF by 25 bps each; CRR unchanged @4%*
- *FIPB clears Tata(76%), Augusta Westland(24%) proposal to assemble choppers.*
- *Telecom mergers and acquisitions guidelines may be announced shortly*
- *Vodafone moves FIPB to wholly own Indian subsidiary in Rs 10,141 crore deal*

ISRO successfully raises Mars Orbiter Mission's orbit

Fourth supplementary orbit raising manoeuvre of Mars Orbiter Spacecraft, starting at 05:03:50 hrs(IST) on Nov 12, 2013, with a burn Time of 303.8 seconds has been successfully completed. The observed change in Apogee is from 78276km to 118642km.



India's first interplanetary craft was launched on November 5 and successfully injected into Earth's orbit. One of the main objectives of the first Indian mission to Mars is to develop the technologies required for design, planning, management and operations of an interplanetary mission. ISRO is hoping to discover more about the loss of water from Mars, map the sources of methane gas, as well as collecting data about the two moons Phobos and Deimos.

Pakistan to oppose India's move in WTO on Subsidy on Rice Export

Pakistan will oppose an Indian move to get legal cover for subsidy on rice exports to the world market in the next WTO

ministerial conference scheduled to be held in the first week of Dec 2013 in Bali, Indonesia. Pakistan is of the view that, India is lobbying for getting legal shelter for subsidy on rice exports, which is likely to affect Pakistan's rice exports. WTO allows required stockpiling for ensuring food security, but discourages its misuse.

Airlines into audit red-flags over 'going concern' claims

As airlines continue to find it tough to generate profits and raise funds, auditors of all three listed carriers, Jet Airways, SpiceJet and Kingfisher Airlines have raised red-flags on their 'going concern' status. A company is typically known as a 'going concern' if it has sufficient resources to continue to operate indefinitely and to avoid any potential bankruptcy risks.

Doctors breaching duty towards patient must face action: Madras HC

The Madras high court has said the breach of duty towards a patient would be valid ground to punish a doctor for professional misconduct. The contract between the practitioner and the patient would commence the moment the doctor agrees to treat the patient. The patient very often is unaware of the nature of treatment and the medication. He entrusts everything to the doctor with a fond hope that he would do everything possible for a speedy recovery," and said that the doctor would face charges of negligence if he did not perform his duty and breached his duty towards the patient.

RBI to prescribe guidelines on foreign banks

As committed to WTO, India allows 12 new foreign bank branches in a year. Currently 43 foreign banks are operating through a network of 333 branches in India. Also, 47 foreign banks have representative offices in the country. The RBI will soon come out with comprehensive guidelines on foreign banks to encourage them to convert into wholly owned subsidiaries (WOSs) and enjoy near-national treatment.